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ABSTRACT

The direct broadcast satellite is the latest in a series of developments in international communication techniques that have radically altered the role of information in the global society. Though now technically feasible, the direct broadcast satellite may never be widely employed because it challenges traditional international political concepts concerning public management of information. Still, this potential for increased flow of information from direct broadcast satellites accentuates the problems of misuse. International efforts to reach consensus on the use and regulation of direct broadcast satellites disclose a basic conflict between national policies governing the public management of information. (HAB)

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DIRECT BROADCAST SATELLITES: THE CONCEPTUAL CONVERGENCE OF THE FREE FLOW OF INFORMATION AND NATIONAL SOVEREIGNTY

JON T. POWELL*

The direct broadcast satellite is the lastest in a series of developments in international communication techniques which have radically altered the role of information in the global society. This recent technical advance underscores a widening gap between invention and application. Though now technically feasible, the direct broadcast satellite may never be widely employed because it challenges traditional international political concepts concerning public management of information.

Present international communications systems utilize radio, cable and satellite transmission devices, which are essentially point-to-point, originating and ending in land-based facilities, and easily accessible to local control. Synchronous satellites, placed some 22,300 miles above the earth's surface at an orbital velocity matching the earth's rotation, have proven to be both a practical and reliable means of data transmission. Approximately fifty nations have constructed sixty-seven earth stations with eighty-two antennas which link a world-wide system of INTELSAT satellites positioned in geostationary orbits over the Atlantic, Pacific and Indian Oceans.[1] These satellites, which have made long distance communication possible by circumventing severe limitations of topography and land-line facilities, have greatly facilitated the international flow of information.

However, this increased flow of information accentuates problems raised by the possibility of broadcasting directly from a satellite. The already evident global nature of television becomes more problematic when technology enables a satellite to bypass

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1. 39 F.C.C. 2d 130, 131 (1973).

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the current gate-keeping role of the earth station and to reach directly into a viewer's home with unforseen or unwanted effects.

The satellite could become a potentially powerful instrument of social change. Universally recognized as a pervasive influence, television can drastically affect viewing habits and socio-political attitudes. Whether such effects are judged to be good or bad, they are the source of international concern for the control of direct broadcast satellites.[2]

Contemporary control of the international flow of information rests upon numerous bilateral and multilateral agreements covering point-to-point communication. The possibility of direct satellite broadcasts has given rise to guarded alarm, which is characterized by generalities espousing the virtues of the system while emphasizing national policies. However valid or complex these points of contention may be, they serve to reveal a growing awareness of the potential impact of uncontrolled flow of information across national boundaries which is readily accessible to individual citizens despite the concern of their government. The need for international cooperation in this matter seems obvious.[3]

International cooperation seems essential to make constructive use of direct broadcast satellites. In this instance, developed

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2. As Arthur C. Clarke noted in a brief synopsis of communications history:

> In the ability to communicate an unlimited range of ideas lies the chief distinction between man and animal; almost everything that is specifically human arises from this power. Society was unthinkable before the invention of speech, civilization impossible before the invention of writing. Half a millennium ago the mechanization of writing by means of the printing press flooded the world with the ideas and knowledge that triggered the Renaissance; little more than a century ago electrical communication began that conquest of distance which has now brought the poles to within a fifteenth of a second of each other. Radio and television have given us a mastery over time and space so miraculous that it seems virtually complete.
>
> Yet it is far from being so; another revolution, perhaps as far-reaching in its effects as printing and electronics, is now upon us. Its agent is the communications satellite.

A. CLARKE, VOICES FROM THE SKY 129 (1965) [hereinafter cited as CLARKE].

3. As was indicated in the Working Group on Direct Broadcast Satellites:

> The potential importance of broadcasting satellites as a means of mass communications both for good or ill is difficult to exaggerate. Its introduction causes problems of a technical and organizational nature which are soluble only on an international plane.
>
> Short of extreme measures, there appears to be no effective long-term method of preventing the reception of unwelcome broadcasts—hence the desirability of international cooperation.

24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 12, U.N. Doc. A/AC.105/117 (1969).

nations have a unique opportunity to expand the international exchange of information and to assist developing countries.[4]

Despite such conceivable advantages, there is evidence of concern, even suspicion, over possible misuse of this new technology. This is particularly apparent in light of the belligerent tradition of international radio broadcasting which reached its apex during World War II, carried on through the "Cold War" period, and continues today.

> The existence of nationally operated, direct-broadcasting TV . . . will mean the end of the present barriers to the free flow of information; no dictatorship can build a wall high enough to stop its citizens listening to the voices from the stars. It would be extremely difficult, if not impossible, to jam satellite broadcasts; any attempt by one country to do so would result in an act of space piracy, or a global telecommunications nuisance which the rest of the world could not permit.[5]

International efforts to reach consensus on the use and regulation of direct broadcast satellites disclose a basic conflict between national policies governing the public management of information. As exemplified by the discussions of the United Nations Working Group on Direct Broadcast Satellites, whose reports comprise part of the research for this article, the arguments focus mainly on two conflicting issues: control of the international flow of information and protection of national sovereignty. These two fundamental issues converge under the increasing pressures of an advancing technology where solutions appear more necessary because lack of agreement is a great deal more threatening.[6]

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4. [S]atellite broadcasting should serve the purposes of peace, friendly relations and understanding among peoples, of social and economic development particularly in the developing countries, of expanding the exchange of information and promoting cultural exchanges and of enhancing the educational level of peoples of various countries. The new opportunities opened by satellite broadcasting for improving the quality of life were seen as particularly important for rural and isolated populations through the possibility of expanding and improving the educational facilities available to them and of facilitating the greater flow of news and information.

28 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 10, U.N. Doc. A/AC.105/117 (1973).

5. CLARKE, *supra* note 2, at 154.

6. One writer states:

> Technology, which might be defined as a process of increasing the disproportion between cause and effect, has incalculably multiplied the potential consequences of human decisions, but has not significantly extended the motives by which men and governments are actuated. Whether or not a particular motive, or an inter-action of motives, was

On the one hand are words of welcome for the new satellite technology, while on the other, expressions of grave concern. Nevertheless, these developments create political commitments which encourage or obstruct the information flow. The present circumstances—like so many others in the field of international diplomacy—seem fraught with contradictions. As the Deputy Secretary of the U.S. Department of State commented on the fluidity of international relations:

> It is difficult to be definitive about the emerging international environment. Every assertion contains its own contradiction. Every attempt to simplify comes across an underlying complexity. Every verity contains a paradox. There is, I fear, no adequate word to express this combination of change, diffuseness, paradox, complexity.[7]

This article on the conceptual convergence of the policies surrounding the international free flow of information and the protection of national sovereignty, as precipitated by the direct broadcast satellite, begins with the recognition that there are problems in discerning significant patterns of contention amid a multitude of policy statements whose meanings are often clouded by reservations and conditions. Initially, an understanding of the issues is made easier by a presentation of definitions and premises from which the analysis will be developed.

I. DEFINITIONS OF TERMS AND SERVICE PARAMETERS

The Working Group on Direct Broadcast Satellites, under the auspices of the Committee on the Peaceful Uses of Outer Space, was established by the United Nations General Assembly:[8]

> [T]o study and report on the technical feasibility of communication by direct broadcast satellites [as well as] current and foreseeable developments in this field including . . . developments in the social, cultural, legal and other areas.[9]

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ever more important than one death, or a thousand deaths, or the thirty million deaths of the Second World War, the mere attrition of arithmetic has now diminished the importance and as the bill of mortality approaches the sum of the species, must eventually extinguish it altogether.

H. GRANT, APPEARANCE AND REALITY IN INTERNATIONAL RELATIONS 11 (1970).

7. 68 DEP'T STATE BULL. 418 (1973).

8. G.A. Res. 2453B, 23 U.N. GAOR Supp. 18, at 9, U.N. Doc. A/7218 (1968).

9. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 1, U.N. Doc. A/AC.105/51 (1969).

The Working Group conducted five sessions, each with a series of meetings. The first two sessions were held in February and July to August, 1969, the third in May, 1970, the fourth in June, 1973, and the fifth in March, 1974. During these sessions the definitions of terms and service parameters for direct broadcast satellites were discussed.

These deliberations generally underlined a recurrent theme first noted by the Canadian and Swedish delegates, that international cooperation in the two areas of broadcasting and outer space were inextricably combined in the case of direct broadcast satellites.

> The subject matter before the Working Group, communication by direct broadcasts from satellites, can be seen as the interaction between two important and pervasive fields of human enterprise: outer space activities and broadcasting. International arrangements for space broadcasting should therefore take into account on the one hand evolving space law, and on the other the present situation with regard to broadcasting in the world. Since both space communication and broadcasting are dependent on the use of radiowaves, international telecommunication law is relevant in both cases.[10]

"Broadcasting-satellite service" was defined as "a radiocommunication service in which signals transmitted by space stations are intended for direct reception . . . by the general public."[11] "Individual reception" was described as "the reception of emissions from a space station in the broadcasting-satellite service by simple domestic installations and in particular those possessing small antennae."[12] "Community reception" was specified as:

> [T]he reception of emissions from a space station in the broadcasting satellite service by receiving equipment, which in some cases may be complex and have antennae larger than those used for individual reception, and intended for use
>
> —By a group of the general public at one location, or
>
> —Through a distribution system covering a limited area.[13]

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10. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 1, U.N. Doc. A/AC.105/59 (1969).

11. This definition was first agreed upon by the World Administrative Radio Conference for Space Telecommunications at Geneva, which also defined "individual" and "community" reception as related to direct broadcast satellites. 29 U.N. GAOR Annex II, at 1, U.N. Doc. A/AC.105/117 (1973).

12. *Id.*

13. *Id.*

Reception techniques have been delineated further into three categories. First, direct satellite broadcasts could reach into community receivers which include a receiving antenna intended to serve a school or small village with a signal distribution system. Second, direct-to-home broadcasting could require the use of augmented receivers which would have more elaborate antenna systems than normally found in home television sets. Third, the service could broadcast directly into existing unaugmented home receivers where no special receiving equipment would be needed.[14]

In the report of its first session, the Working Group estimated the time parameters for the development of direct broadcasting by satellite, noting that broadcasting to community receivers is sometimes referred to as "semi-direct".[15]

> Direct broadcast into community receivers could be close at hand. Technology currently under development might allow this in the mid-70's. Such a system is considered to be less expensive to launch than one intended for reception directly in people's homes.
>
> Direct broadcast of television into augmented home receivers could become feasible technologically as soon as 1975. However, the cost factors for both the earth and space segments of such a system are inhibiting factors . . . therefore, it is most unlikely that this type of system will be ready for deployment on an operational basis until many years after the projected date of feasibility. . . . Direct broadcasting television signals into existing, *unaugmented* home receivers on an operational basis is not foreseen for the period 1970-1985. This reflects the lack of technological means to transmit signals of sufficient strength from satellites.[16]

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14. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, Annex III, at 1, U.N. Doc. A/AC.105/51 (1969).

15. 24 U.N. GAOR, Committee on the Peaceful Uses of Outer Space, at 2, U.N. Doc. A/AC.105/66 (1969). *See also* U.N. Doc. A/AC.105/65 (1969) at 2.

16. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, Annex III, at 3, U.N. Doc. A/AC.105/51 (1969). Robert E. Lee, FCC Commissioner since 1953, has demonstrated a special interest in satellite communications, and points to 1985 as the earliest possible date for unaugmented reception:

> A satellite system broadcasting television to conventional sets with simple indoor antennas is not likely to be developed before 1985 for two basic reasons. The technology does not exist to launch and operate satellites of sufficiently high power and, secondly, the frequencies allocated by the International Telecommunications Union for satellite broadcasting are not those which can be received by present-day television sets.

Lee, *Direct Broadcast Satellites: A Reality This Year?*, TELEVISION/RADIO AGE, Mar. 18, 1974, at 112 [hereinafter cited as Lee].

A recent study headed by Abram Chayes and James Fawcett, drew three conclusions about the development of direct broadcasting, based on a survey of four nations—France, Japan, United Kingdom and the United States:

> First, direct satellite broadcasting will take the form initially, and perhaps for a number of years, of satellite broadcasts to community receivers, and it is to this form of broadcasting that the replies to particular questions are largely addressed. Secondly, it is assumed that the primary uses of direct satellite broadcasting will be for education, both cultural and technical, and for information services, and that developing countries are likely to give priority to the former. Thirdly, satellite broadcast programs having global coverage will be rare, and therefore direct satellite broadcasting will be internationally organized and managed principally through bilateral and regional agreements and arrangements, though ITU, probably in part reorganized, and the Intelsat system will doubtless have important roles.[17]

A Conference on Direct Satellite Broadcasting was convened in Bellagio, Italy, in February, 1974.[18] The discussion followed a path similar to the Chayes study and concluded that there is a need for bilateral and multilateral agreements as well as development of negotiating agencies.[19]

The definition of terms, description of services, and tentative timetable for implementation of such service are thus far the most concrete results of discussions concerning the international role of direct broadcast satellites. Much negotiating remains before there can be more than token development of this system. In the Chayes study and discussions at the Bellagio Conference can be found the analytical structure so typical of the United Nations' debates. While the potential benefits of direct broadcast satellites are enthusiastically recognized, protection of national sovereignty

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17. A. CHAYES, J. FAWCETT, M. ITO, & A. KISS, SATELLITE BROADCASTING 22 (1973) [hereinafter cited as CHAYES].

18. This conference was called by the International Broadcast Institute (IBI) and the American Society of International Law. Among those participating were such experts as Swedish Ambassador Olof Rydbeck (Chairman of the U.N. Working Group on Direct Broadcast Satellites) who acted as conference chairman and Joseph C. Nichols (Chief, International & Satellite Communications Unit of the U.N. Radio and Visual Services Division) as well as 19 other delegates from around the world.

19. Conference on Direct Satellite Broadcasting: Summary of Discussions, Bellagio, Italy, Feb. 20, 1974. 6 INTERMEDIA Supp. (1974), at 1 [copy on file at CALIF. W. INT'L L.J.].

remains an overriding concern. The eventuality of direct broadcasting by satellite has generated a convergence, possibly a confrontation, of two ubiquitous concepts in international relations. An examination of these two concepts in light of this new challenge may provide clearer perception of their significance and validity.

II. THE FREE FLOW OF INFORMATION

Although many national constitutions resemble that of the United States by affirming freedom of expression, the wording of the first amendment makes the U.S. Constitution a unique document because of its definitive restriction of governmental power. The opening clause, "Congress shall make no law . . ."[20] more clearly than any other constitution, delineates political authority as separate from the fundamental human right to freedom of expression.[21]

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20. U.S. CONST. amend. I.

21. For example, the Constitution of the People's Republic of China reads:

> Citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration and the freedom to strike, and enjoy freedom to believe in religion and freedom not to believe in religion and to propogate atheism.

Constitution of the People's Republic of China art. 28 (1975).

The text of the Basic Law of the Federal Republic of Germany contains three paragraphs which include guarantees suggesting a political relationship between government and citizen that affects the context of freedom of expression:

> (1) Everyone has the right freely to express and to disseminate his opinion by speech, writing and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by radio and motion pictures are guaranteed. There shall be no censorship.
>
> (2) These rights are limited by the provisions of the general laws, the provisions of law for the protection of youth and by the right to inviolability of personal honour.
>
> (3) Art and science, research and teaching are free. Freedom of teaching does not absolve from loyalty to the constitution.

GRUNDGESETZ art. 5 (1949, amended 1961) (W. Ger.).

The Indian Constitution also alludes to political qualification:

> Right to Freedom. All citizens have the right to freedom of speech, assembly, association, movement, residence, property and profession, but these rights are subject to the interests of the sovereignty and integrity of India, State security, friendly diplomatic relations, public morality or in relation to contempt of court, defamation, or incitement to an offence.

CONSTITUTION OF INDIA art. 19 (1949, amended 1972).

The Japanese Constitution incorporates articles which, while outlining basic rights, still suggest the presence of political guarantees based on government authority.

> Art. 10. The conditions necessary for being a Japanese national shall be determined by law.
>
> Art. 11. The people shall not be prevented from enjoying any of the

This difference constitutes a foundation from which assumptions regarding a basic freedom seem to have evolved. If the source of a constitutional guarantee of freedom of expression originates within the authority and obligation of a political body, its implementation inevitably arises from political considerations rather than from recognition of fundamental non-political human rights. This blending of human rights and political authority creates a perspective which permeates the subsequent discussion of the challenge to the international free flow of information raised by the direct broadcast satellite.

A. General Conceptual Parameters

Among the basic documents indicating international agreement on the fundamental right of access to information is the Universal Declaration of Human Rights,[22] adopted by forty-eight members of the United Nations General Assembly. Ian Brownlie writes that while the Declaration is not legally binding:

> Nevertheless, some of its provisions either constitute general principles of law . . . or represent elementary considerations of humanity. More important is its status as an authoritative guide, produced by the General Assembly, to the interpretation of the Charter. In this capacity the Declaration has considerable indirect legal effect, and it is regarded by the Assembly and by some jurists as a part of the law of the United Nations.[23]

Although basic concepts related to human rights are interwoven in the Declaration, of particular interest are the statements

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fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.
Art. 12. The freedom and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.
Art. 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.
KENPO (Constitution) (Japan, 1967).

See also CONSTITUTION OF THE REPUBLIC OF INDONESIA arts. 26-28 (1945, abrogated 1949, reinstated 1959); CONSTITUTION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA arts. 153, 155, 167, 168 (1974); CONSTITUTION OF THE UNION OF SOVIET SOCIALIST REPUBLIC arts. 124, 125 (1936).

22. Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/811 at 1 (1948) [hereinafter cited as Declaration].

23. I. BROWNLIE, BASIC DOCUMENTS IN INTERNATIONAL LAW 132 (1967) (footnote omitted) [hereinafter cited as BROWNLIE].

contained in the preamble, articles 2, 19, and 30. The second paragraph of the preamble welcomes "the advent of a world in which human beings shall enjoy freedom of speech . . .";[24] article 2 extends the document's affirmation of basic human rights to every individual "without distinction of any kind," including the "limitation of sovereignty,"[25] while article 19 states that:

> [E]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions . . . and to seek, receive and impart information and ideas through any media and regardless of frontiers.[26]

Article 30 reinforces the concept of a fundamental right to information by conluding that "nothing in the Declaration may be interpreted as implying . . . any right to perform any act aimed at the destruction of . . . the rights and freedoms set forth herein."[27]

The Declaration would seem to be a natural extension of the principles laid down by the Charter of the United Nations, which calls for international cooperation to promote fundamental freedoms "for all without distinction to race, sex, language, or religion. . . ."[28] However, the Charter also acknowledges that principles of national sovereignty are a significant factor in international relations in any quest for peace and security. It identifies the purpose of the United Nations "to maintain inter-

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24. Declaration, *supra* note 22, preamble; BROWNLIE, *supra* note 23, at 133. This paragraph reads:

> *Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

25. Declaration, *supra* note 22, art. 2; BROWNLIE, *supra* note 23, at 134. This article reads:

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

26. Declaration, *supra* note 22, art. 19; BROWNLIE, *supra* note 23, at 135.

27. Declaration, *supra* note 22, art. 30; BROWNLIE, *supra* note 23, at 137. Article 30 reads:

> Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

28. U.N. CHARTER art. 1; BROWNLIE, *supra* note 23, at 3.

national peace and security, and to that end; to take effective collective measures for the prevention and removal of threats to peace . . . ."[29] Further, the Charter states that participating States shall act according to specific principles, including "the principle of the sovereign equality of all of its Members."[30]

Having recognized the fundamental right to freedom of speech and the ascendancy of national sovereignty, the Charter grants specific powers to the Security Council for non-military actions against a belligerent state, including the right to interfere with communications. Article 41 states as an available option:

> The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, *radio, and other means of communication*. . . .[31]

The United Nations General Assembly became concerned with freedom of information during its first session in 1946, when a Philippine proposal called for an international press conference to assure a world-wide free press.[32] A General Assembly resolution at that time made the declaration that "[f]reedom of information is a fundamental human right and is the touchstone of all freedoms to which the United Nations is consecrated."[33]

In 1972, the General Assembly called for the elaboration of principles to govern the use of direct broadcast satellites. The Committee on the Peaceful Uses of Outer Space was requested to develop these principles as soon as possible. The vote included 102 countries in favor with seven abstentions.[34]

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29. U.N. CHARTER art. 1, para. 1; BROWNLIE, *supra* note 23, at 3.

30. U.N. CHARTER art. 2; BROWNLIE, *supra* note 23, at 3.

31. U.N. CHARTER art. 41; BROWNLIE, *supra* note 23, at 13 (emphasis added). Article 73 under Chapter XI of the Charter, entitled Declaration Regarding Non Self-Governing Territories, affirms that member states ensure social advancement and assist the development of free political institutions, further peace and security, and promote development. Such a statement would appear to be contradicted if the efforts to use direct broadcast satellites to achieve advancement where otherwise impossible were frustrated because of hypothetical objections.

32. 1 U.N. GAOR Annexes 2B, 12, at 66-7, 108-10, 365, 568-70, 587-88 (1946); 1 U.N. RESOLUTION SERIES (1946-48) 82 (D. Djonovich, ed. 1972).

33. G.A. Res. 59, U.N. Doc. A/64 Add. 1 at 95 (1947); 1 U.N. RESOLUTION SERIES (1946-48) 82 (D. Djonovich, ed. 1972).

34. *See* 27 U.N. GAOR Annexes, Agenda Item No. 28, 29, 37 at 14 (1972).

Only the United States voted against it since it did not mention the Universal Declaration of Human Rights and because concern was expressed for the protection of the unimpeded international exchange of information and ideas. The American position was that the laissez-faire affirmation of first amendment rights would not support an action to regulate the free flow of information.[35]

In 1969 the Working Group on Direct Broadcast Satellites had already noted that the U.N. Charter, *inter alia*, specified the principal of sovereign equality while affirming:

> [T]he development of friendly relations, the achievement of international co-operation, promotion of respect for human rights and fundamental freedoms, and the principle of non-interference in matters within the domestic jurisdiction of any state.[36]

Although it seems that most international discussions and agreements almost inextricably link concerns for the free flow of information with the protection of national sovereignty, it is possible to identify some separate elements in each concept if only for analytical purposes. However, the interplay of the two concepts remains in a state of fluctuating convergence, like a musical theme which may at different times emphasize different chording but which functions continuously as the basic underlying pattern. Having this in mind, the first element to be examined in the concept of the international free flow of information is the concern for prior consent.

E. Prior Consent

The United Nations Educational, Scientific and Cultural Organization (UNESCO) convened a Meeting of Governmental Experts of International Arrangements in the Space Communications Field in December 1969.[37] The deliberations of this meeting formed the basis for adoption of the Declaration of Guiding Principles in the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange.[38]

35. G.A. Resolutions 2916 and 2917, 27 U.N. GAOR Supp. 30, at 14, U.N. Doc. A/8730 (1972).

36. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 6-7, U.N. Doc. A/AC.105/66 (1969).

37. United Nations Educational, Scientific and Cultural Organization, Broadcasting from Space, Reports and Papers on Mass Communication, No. 60 (1971).

38. Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange, 17 UNESCO, Annex, at 2, Doc. 17C/98 (1972).

The function of this UNESCO Declaration was merely to set guiding principles, not to act as a legally binding instrument. Article IX(1) of the Declaration reads:

> [I]t is necessary that States, taking into account the principle of freedom of information, reach or promote prior agreements concerning direct satellite broadcasting to the population of countries other than the country of origin of the transmission.[39]

This requirement of prior consent has been a frequently debated issue, and while it may have the negative connotation of "prior restraint,"[40] there are arguments which explain its appeal.

A cursory examination of broadcast systems, which number over two hundred worldwide, discloses that broadcasting has generally developed as a government service. In countries such as the United Kingdom, Canada and Australia, which have dual services—commercial and government—existing together, public acceptance of the tradition of government service in broadcasting still pervails. The United States, despite token public television service, does not have this tradition. Due to an empnasis on policies of private, commercial and local broadcasting, there is no governmental centralization of broadcast services such as is evident elsewhere. Whatever the political ideology or national culture, most governments have some role in the directing of broadcast programming.

The possibility that direct broadcast satellites might bypass the participating or controlling role has reaffirmed a world-wide premise that a government has a responsibility for broadcast programming. The very wording of the reports of international meetings and negotiations confirms this. Whether the broadcast system is tightly controlled or left generally independent, the government remains the unquestioned source of broadcast standards.[41]

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39. *Id.*, art. IX, para. 1.

40. For cases dealing with the prior restraint concept, see *Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931); *Bantam Books v. Sullivan*, 372 U.S. (1963); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971).

41. Consider the statement taken from a Working Paper presented to the Working Group on Direct Broadcast Satellites by Canada and Sweden:

> At the same time, however, there appear to be limits to this cooperation. States often weigh the economic, scientific, technical and other benefits of international cooperation in satellite systems against the political demands of their own national or regional interests, or perhaps, of their various cultural requirements and ideological commitments.

Prior consent thus arises as a natural outgrowth of a government's obligatory role in the direction of its national broadcasting service. Moreover, since satellite broadcasting could be considered an international activity, the pervasive concern for sovereignty in the absence of any effective international means of controlling this electronic information flow intrudes upon any national recognition of freedom of expression.[42]

In order to accommodate national sovereignty and to protect national cultures in the absence of any enforceable international law, the only solution at present seems to lie in strict adherence to the principle of prior consent. There are also economic concerns which have both national and international implications. For example, FCC Commissioner Robert E. Lee recently commented that unrestricted use of direct broadcast satellites would undermine local broadcasts if used on a national scale.[43] He

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These latter interests may be sharply highlighted in the context of direct broadcasting. And it is not inconceivable that, in response to these concerns, a number of distinct satellite broadcasting systems may be developed in various areas of the world.

24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 5, U.N. Doc. A/AC.105/59 (1969).

42. Most delegations to the Working Group were of the view that:

> [D]irect television broadcasting by satellite should be conducted, bearing in mind the need to ensure the free flow of information, on a basis of strict respect for the sovereign rights of States and for the right of all countries and peoples to preserve their culture. Other delegations held the view that it is most appropriate that such broadcasting be conducted in a spirit of cooperation, with due regard to the rights of sovereign states and to the need to ensure the rights of open and free exchange of information and ideas among peoples, and bearing in mind different cultural values. Other delegations, however, were of the opinion that the concept of "free flow of information" does not constitute a principle of international law, and that in the matter of international exchange of information, States should base themselves on the principle of strict observance of the sovereign rights of States.

29 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 10, U.N. Doc. A/AC.105/127 (1974).

43. Lee, *supra* note 16, at 36, 86. Commissioner Lee urges a more realistic attitude toward the adoption of a prior consent policy through the following arguments:

> The Communications Act of 1934 emphasizes local control of program broadcasting. The direct broadcast satellite, whether direct to a home or direct to a community receiver, would, of course, emphasize regional, if not ultimate global, control of program broadcasting.
>
> The use of direct broadcast satellites within the United States would deal a drastic blow to local broadcasters. They would, in effect, be eliminated if and as the use of direct broadcast satellites grew as a domestic network tool. This certainty of bypassing local network affiliates and local cable and pay television broadcasters, however gradual, will be a volatile political issue, and a serious economic issue. . . . It would appear that the best way to ensure use and access of any regional/global direct broadcast satellite system is to encourage prior agreements in order to safeguard our technology and use of it.

recognized that the constraints of the first amendment demand broadcasts without prior restraint. While recognizing an ingrained reaction to avoid any declaration which would imply the right of government to regulate program broadcasting, he qualified an unconditional affirmation of first amendment principles in this case because the FCC and the State Department "must deal with international political realities as well as domestic mandates."[44]

During its most recent session, the U.N. Working Group on Direct Broadcast Satellites summed up the agreements for and against prior consent. It noted that most delegates favored prior consent for the following reasons: (a) Prior consent recognizes a nation's right to regulate its own communications system; (b) Article 7, 428A, of the revised Radio Regulations adopted by the 1971 World Administrative Conference for Space Telecommunications already recognizes the necessity of prior consent, and therefore it is appropriate to propose U.N. adoption of this principle; (c) This principle would apply to all matters, technical or otherwise, related to establishing or operating a satellite broadcast system; (d) Prior consent would not contravene national legislation since a receiving nation could grant or refuse permission according to its policies toward the free flow of information; (e) A State has the right to participate in activities covering areas under its jurisdiction as governed by international agreements on matters of scheduling, program content, production, program exchange, and personnel training.[45]

The FCC ought to both encourage continued NASA research into the technology of the direct broadcast satellite and encourage the State Department and Congress to consider an international agreement. The State Department must be made to see that prior agreements of the Canadian/Swedish sort will free our hands more than they will tie them. If a legal, political argument will not persuade the State Department, then the very fact of our isolation on the issue at the U.N. should convince the Department to act. It would appear that the U.S. Mission to the U.N. is bogged down in the essentially substance-less issue of common law vs. civil law approach, and the position paper reads more as if the Department is trying to convince itself than the reader. The United States is in a corner: it can vote for the principles or it can veto them, which in effect would be meaningless, as the resolution would still pass and the United States, either way, would be forced to mold its direct broadcast satellite policy along the lines the U.N. would set down.

44. *Id.* at 88.

45. In the Working Group a view was expressed that:

[T]here is a clear distinction between direct television broadcasts by satellite specially meant for foreign States and those as a result of unintentional spillover. The principle of prior consent applies to the former category. The ITU Regulations cover only technical matters. The need to formulate the principle of prior and express consent is not directly connected with technical matters but with more important considerations

Among the arguments against prior consent were the following: (a) The free exchange of ideas necessary for better understanding among nations and maintenance of peace and security would be hindered; (b) Prior consent violates article 19 of the Universal Declaration of Human Rights by giving each nation veto power over the flow of information; (c) It would inhibit full development of satellite broadcast services; (d) It would create grave problems for any domestic satellite broadcast system if it applied to broadcast spillover; (e) It infringes on the sovereign right to maintain domestic media systems without externally imposed restrictions; (f) Present international regulations governing broadcasting relate to technical aspects of future satellite broadcast systems, not broadcast content; (g) Voluntary cooperation could safeguard national cultural identity and encourage a mutual exchange of information; (h) Apart from ITU Radio Regulations, the prior consent principle departs from the internationally accepted practice of accepting radio broadcasts.[46]

Whatever merit may be given to the arguments validating or questioning the right of prior consent, one last item should be noted as contributing substantially to global concern in this area. International radio broadcasting, which blossomed during World War II and which has since continued, remains a factor which seems to contradict the principle of the sovereign right to regulate broadcasting programming. Current international radio voices are directed toward the peoples of a number of nations whose governments clearly oppose such activities. Radio Free Europe, Voice of America, Radio Liberty and Radio in the American Sector—whose messages are directed toward East Europe, the Soviet Union and other areas under communist domination—are but a

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arising from the principles of sovereignty and non-intervention in the domestic affairs of other states. The principle of sovereignty gives to a State the right to freely select and develop its own political, social, economic and cultural system. Questions relating to the areas of education, culture and the propagation of information regarding current events are clearly matters of domestic competence. It would be wrong and inadmissible for a State to impose harmful views on the peoples of other States. The concept of exchange of information implies that the flow should be bilateral and not in one direction only. States have uneven opportunities in using this technology and this factor strengthens the need to ensure that activities in the area of direct broadcasting by satellite to foreign States are conducted on the basis of prior and express consent.

29 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 13-16, U.N. Doc. A/AC.105/127 (1974).

46. *Id.*

few examples of the numerous national radio services which are used in support of foreign policy.

Despite any legitimate concern for preserving or expanding the international free flow of information, this activity has political overtones which might explain the widespread caution toward the use of direct broadcast satellites for television transmissions. This caution has been intensified further by the present flow of television programming, the next topic of discussion.

C. Realities of the International Information Flow

The broadcast of television programming across national boundaries has caused concern because studies indicate this flow as being chiefly one-way. The introduction of direct broadcast satellites to already existing international radio services and current television program exports would seem to indicate an increasing volume of this one-way flow, rather than any equitable cross-national exchange of information.

However, the mutual exchange of ideas, enhanced by the use of direct broadcast satellites, constitutes a pervasive theme underlying international discussions and associated literature. Typical is this statement:

> The Working Group is convinced that direct television broadcasting by satellite should serve the purposes of maintaining international peace and security through developing mutual understanding and strengthening friendly relations and cooperation among all States and peoples, assisting in the social and economic development particularly in the developing countries, facilitating and expanding the international exchange of information, promoting cultural exchanges and enhancing the educational level of peoples of various countries. The Working Group is of the view that States should carry out direct television broadcasting by satellite exclusively in a manner comparable with these objectives. The view was expressed that the purposes of direct television broadcasting by satellite to be listed in principles should not be restrictive or exhaustive and should not exclude other areas such as providing entertainment and commercial programmes.[47]

A recent UNESCO publication,[48] which presented a survey

47. *Id.* at 10.

48. K. Nordenstreng & T. Varis, Television Traffic—A One-Way Street? Reports and Papers on Mass Communication, No. 70 (1974), at 40 [hereinafter cited as Nordenstreng; excerpts on file at CALIF. W. INT'L L.J.].

and analysis of the international flow of television programming, offered two conclusions based on findings, described as "two indisputable trends to be discovered in the international flow: (1) a one-way traffic from the big exporting countries to the rest of the world, and (2) dominancy of entertainment material in the flow," with the United States the leading exporter.[49]

The analysis in this document includes a statement by Professor E. Katz of the Hebrew University in Jerusalem, which provides some perspective to the findings of the survey by suggesting three competing hypotheses: (a) Television schedules are similar everywhere because American cultural imperialism is successful; (b) Western programming has been a universally accepted standard for a voracious medium with inflated demand and supply; (c) Television programming cannot possibly be similar everywhere because social, cultural and political differences must necessarily find their way into this cultural product.[50]

In this same study, Dr. Urho Kekkonen, President of Finland, observes that the traditional Western concept of freedom of expression where "the state's only obligation is to guarantee laissez-faire . . . has allowed freedom of speech [to] become freedom of the well-to-do."[51] He expands on this thesis to point

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49. *Id.* The four leading nations in the export of television programming in the early 1970's are the United States with a total annual export of 150,000 hours; Great Britain and France, each with 20,000 hours; and the Federal Republic of Germany with 6,000 hours. *Id.* at 30-31.

50. Professor Katz applies these hypotheses to the data of the study, with the following result:

> The inventory report ought to be able to tell us which of these is the more correct hypothesis. At very least, it ought to be able to tell whether television is as much the same everywhere as we think it is.
>
> What are the findings? First of all, the report shows that certain countries import very little from outside: The USA, USSR and Japan are outstanding in this respect. Argentina, France, the UK and Italy come next followed by Germany, Poland, Thailand and Uganda, which are also relatively high in the proportion of self-production. Some of these countries also distribute programmes to others, England for example, is rapidly advancing in this respect. The data show more international difference than I had been expecting; and the regional interchange from local centers (Mexico, and Argentina, for example) is greater than I had been led to believe.
>
> On the other hand, it is also true that the predominant American influence is visible even in Europe (which imports one-third of its programmes on the average), in parts of Asia and certainly in the Middle East and Latin American countries which import as much as half of their programmes from the United States (Africa is virtually unrepresented in the study—it should be noted—but it surely is a high importer).

Id. at 47.

51. *Id.* at 44.

out the inequalities that exist among nations which result in an unbalanced flow. Since poorer nations are unable to reciprocate, the flow of television programming is one-way and unbalanced, in no way possessing "the depth and range which the principles of freedom of speech require."[52]

It also should be noted that since the introduction of satellite communications in 1963 there has been little change in this one-way flow. Satellites have not corrected the imbalance, but rather, have confirmed traditional flow patterns.[53]

Having concluded that the traffic flow for television programming is indeed one-way, and that the present system of satellite communications has only exacerbated that flow, it might be asked if there is any way to predict change in the flow resulting from direct broadcast satellites. Assuming technical capability and national will, changing the current flow may not be so relevant as creating new flows of information. The developing nation may not need to respond directly to the Western flow if instead it develops effective means of communications within its own boundaries.

Literacy, health education, and technical and agricultural training through local means in the developing nations are too slow or unavailable under present conditions. For this reason, communication satellites have been hailed as an educational breakthrough because of their ability to reach across distances at relatively small costs without requiring interconnecting cable or microwave relay systems. Such optimism over the educational possibilities of the communication satellite—and optimism is the appropriate term because little has been actually accomplished—rests upon the assumption that a technology capable of overcoming the cost-to-distance ratio in communication is the answer to assisting national development now hindered by lack of transportation, sense of isolation and inability to cope with or manage the environ-

52. *Id.*

53. Technological innovations including communciation satellites:

> [H]ave not changed the course of traffic. Extensions in communication technology . . . to the developing parts of the world have not resulted in more balanced information flows between these and the industrialized countries . . . . [I]t is another fact that of all the broadcasting hours (news items included) transmitted by the INTELSAT system and received by various earth stations over 90 percent originate in the USA and Europe alone (mostly internal traffic between them). . . .

Id. at 52.

ment. One important aspect of this reduction in the communications cost-to-distance ratio has been identified as follows:

> Generally, all our traditional communications and information media have started in the cities and slowly penetrated or, as some would have it, faded out in the country-side. For once, we now have at our disposal a communications device which does not automatically favor the cities. Once a satellite is available, it covers an entire territory and the installation of receiving equipment can be arranged according to social desirability without being dependent on distribution constraints due to lack of a communications infrastructure.[54]

To date there has been only one instance of implementation for educational purposes of a direct broadcasting satellite linked to community receivers in a developing area.[55] The planning stage of this project began in 1967 as a joint Indian-American educational experiment in satellite broadcasting, and was implemented in 1975. This is the first large-scale international project of its kind with specific instructional and technical objectives.[56]

Broadcast satellites may never be the total—or even the major answer to educational underdevelopment. No matter how technically efficient they are, their utility for educational purposes must take into account many other factors. For example, a plan for educational broadcasts must include printed material such as teachers' guides, text books, and so forth, which must be sent to the schools. To be effective, this plan might require several tons of printed material for each school every year, necessitating delivery vehicles able to travel dirt roads, often under tropical rains.[57]

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54. Ploman, *Satellite Broadcasting: Potentialities and Problems*, 38 ITU TELECOMMUNICATION J. 323 (1971).

55. The Working Group on Direct Broadcast Satellites has repeatedly espoused the virtues of direct satellite broadcasts for educational purposes in developing areas. Typical are such remarks as:

> [B]roadcasting via satellites offers an opportunity to the developing nations which have still not developed a general telecommunications network, for this new means permits the acceleration of their national programmes of integration, economic development, health, agriculture, education, communal development and culture.

24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 4, U.N. Doc. A/AC.105/66 (1969).

56. *See* TELEVISION DIGEST, Aug. 11, 1975, at 4. For a description of this project, see Smith, Satellite Applications for Education, Culture, and Development (UNESCO publication) [copy on file at CALIF. W. INT'L L.J.].

57. Plans for many systems:

> [S]eem geared to providing specific educational messages: curb population, plant new seed, don't move to the over-crowded cities, learn to read and write. But the same countries planning to send these messages are

While discussion of the educational advantages and limitations of satellite communication can develop into an enthusiastic dialogue, universal awareness of the direction of the information flow and pervasive appeal of television remain the two contending factors of contemporary reality. The issue thus becomes a matter of assessing probable cultural impact of direct broadcast satellites upon existing cultural conditions.

D. The Cultural Factor

In order to understand the significance of the adaptive problems facing developing nations, it is necessary to begin this discussion by referring again to the divergent national policies governing information management. The traditional Western concept of freedom of speech, holds "that the state's only obligation is to guarantee laissez-faire, [meaning] that society [allows] freedom of speech to be realized with the means at the disposal of each individual."[58] However, there is the necessity for emphasizing the directed social function of communication.[59]

While it may be obvious that any system of communication must be culturally integrative to be effective, the problems of integration are as complex as they are subtle and significant.[60] The

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already sending other messages via non-educational media now in place and running. It is a fair bet that when a country suggests, via educational media, that life "on the farm" can be improved and made better, while at the same time it shows pictures, also on television, of the glamourous opening of the new Opera House in the Capital city, the large and shiny motor cars in the streets of the same city (which may actually be choking and smogging people to death), the peasant, who the world over is no fool, will get the point. And the point he'll get will not be that life on the farm is going to get better!

The argument here is simply that satellites alone cannot bring about miracles, that all aspects of a communication system interrelate, that planning for the use of a system must be total, integrated, sophisticated and based on a nation's ability to deliver real-world goods in real time.

Cowlan, *Suppose it works?*, 5 UNITAR NEWS 34 (1973) [copy on file at CALIF. W. INT'L L.J.].

58. Nordenstreng, *supra* note 48, at 44.

59. As Nordenstreng and Varis indicate:

A different judicial system would not just be content at guaranteeing freedom of action to its citizens. It could define basic rights in a positive way. The state would be obliged to arrange for its citizens the practical possibility towards the realization of their rights.

Id.

60. The Working Group indicated that:

Any developing nation, while mastering the new and complex technology, should try to fit it in its own existing traditions and cultural patterns. . . . [T]he developmental message must be intertwined with subtlety and sophistication so that it would be acceptable to the broad national cultural life.

prospect of cultural change assumed to be inherent in direct broadcasting by satellite has led to expressions of caution in the joint U.S.—India venture mentioned earlier.[61]

The very idea of communication with external influences by a population which has never been in close touch with the twentieth century could be frightening to a government which is dependent upon outside resources for orderly and manageable development. The cost of such communication may be too great if it causes awareness of needs which cannot be satisfied, ideas which cannot be implemented, or ideals which cannot be practiced. The question remains: how can the direct broadcast satellite be used not merely to *introduce* ideas but to assist the national infrastructure in implementing those ideas, while avoiding intolerable conditions of frustration, unrest and cultural confrontation?[62]

To describe all possible conflicts arising from cultural differences exacerbated by satellite broadcasting would be an overwhelming task. In most nations, regardless of their stages of development, "controls are exercised in relation to programmes

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28 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, Annex I, at 2, U.N. Doc. A/AC.105/114 (1973).

61 One individual noted sorrowfully that:

> [S]ome countries take it that their technological superiority gives them a right to set the cultural life of others. Historically, many culturally rich countries have been suppressed by technologically superior countries and India is an outstanding example of this. Since the advent of the press, mass media have played a very important role as a cultural wing of any socio-political system. At this stage it is essential that media must consciously be used within the framework of national value structures and social circumstances and must keep in mind the social purpose. The Minister then referred to "cultural shock" and warned that unless properly planned the satellite television can lead to "cultural shock". India is very much aware of this. The communication policy has to be closely integrated with the total plan of growth and transition and must have close relationship with the plan of growth—economically, socially, and culturally. India's plan now is to improve the quality of man and the communications policy cannot be oblivious to this.

Id. at 3.

62. As noted in Wedge, *World Communication, Culture and Statecraft*, 5 INTERNATIONAL EDUCATIONAL AND CULTURAL EXCHANGE 25-26 (1969):

> Cultural systems are exceedingly complex and tied up with the history and politics of nations. The elements of culture—language, belief, values, customs, forms of relationship, outlooks on the world—are in constant interaction and, in the contemporary world, are constantly changing. They provide standards by which messages are interpreted. It can be said with confidence that there will be unexpected responses to information that crosses cultural boundaries *on both sides* of the interaction; the receiver will interpret some messages in unexpected ways and the sender will find intentions distorted and will often interpret the distortion as willful or hostile policy.
>
> *The principle problem of public diplomacy is to minimize the risks of misinterpretation and to encourage the framing of international messages to facilitate better understanding of the purposes of a nation.*

portraying such matters as violence, horror and sex and programmes disseminating propaganda or ridiculing domestic customs or beliefs."[63] More subtle is the cumulative effect of introducing new standards with unknown results. This situation could create grave concerns for developing nations which have few, if any countervailing social restraints.[64]

The concern for program content extends also to advertising and program sponsorship, aspects which could be very attractive if direct satellite broadcasting were permitted on a commercial basis. During its second session, some delegates to the Working Group on Direct Broadcast Satellites felt that regional program sponsorship could assist a satellite television system in becoming economically viable. However, it was noted that there could be adverse results affecting national television and advertising agencies, and causing undesirable changes in buying habits. Conflicts between satellite broadcast advertising and local legislation could be resolved either by international regulation, or a total ban on such advertising.[65]

The United Kingdom delegation to the Working Group had a word of caution concerning the possibility that a combination of

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63. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 2, U.N. Doc. A/AC.105/63 (1969).

64. As indicated by the Working Group:

> Less readily identifiable is the gradual change in political, social and cultural values which may be caused by continual exposure to material from abroad. While the free exchange of programmes may make a real contribution to mutual understanding, countries whose domestic television services are relatively underdeveloped and where foreign television broadcasts comprise the main source of information may be subject to cultural and political pressures of which they are scarcely aware.

24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 7, U.N. Doc. A/AC.105/117 (1969).

65. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 11-12, U.N. Doc. A/AC.105/66 (1969). The United Kingdom delegation to the Working Group made this statement:

> In most countries where commercial advertising has developed as the sole or an alternative form of support for television, a code of fair practice has been introduced often by way of parliamentary legislation to prevent false trade descriptions, overt denigration of other branded products, etc. In some instances specific imbargoes have been placed on the advertising of certain products, e.g. tobacco. If a somewhat anarchical situation is not to arise or if domestic advertising sponsors are not to be placed at a disadvantage some harmonization of international advertising codes, standards and legislation may prove desirable. An alternative solution would be to ban all commercial advertising from direct satellite broadcasting.

24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 8, U.N. Doc. A/AC.105/117 (1969).

satellite advertising and nationally known brand names could lead to problems of monopoly:

> If a few states were able to monopolize international commercial advertising, penetration of foreign markets by these States could effect a significant change in the balance of international trade in consumer goods.[66]

There was also a word of warning concerning use of subliminal techniques, "which could serve many nefarious purposes," and a recommendation of immediate prohibition of such techniques.[67]

E. Copyright

Though complex and as yet unresolved, the issues of copyright and satellite broadcasting have been discussed at the international level. While a detailed analysis of the practical complexities of existing copyright conventions is beyond the scope of this inquiry, some general comments about their possible effects on the international flow of information by direct broadcast satellites are in order.

Satellite television broadcasting could create substantial new audiences which presently view dated re-runs on a limited schedule in developing countries, or principally national programming in industrialized nations. In either case, copyright protection becomes a fundamental problem, the solution to which is the key to effective utilization of this new technology. It therefore becomes apparent that because direct broadcast satellites are international in character, any practical solution must include all nations. As Commissioner Lee notes:

> An international copyright accord in which all the nations of the world participated would do much to remove the present chaos and confusion, which, if indefinitely extended could seriously hamper or completely block the development of broadcast satellites for educational and other purposes. Therefore, the concept of uniform copyright legislation among nations may be said to be a desirable goal.[68]

Several present conditions obviously affect any copyright negotiations. The first of these is the fact that great differences exist in national copyright protection which, unless resolved by

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66. *Id.*
67. *Id.* at 6.
68. Lee, *supra* note 16, at 85.

international agreement, could lead to endless disputes. This situation is further complicated because unlike printed material:

> [W]hose distribution can often be restricted in the event of a copyright dispute, television material is of an ephemeral nature whose distribution can rarely be prevented and must therefore be regulated in advance.[69]

Another major complicating factor is that although a number of copyright conventions are in effect, no single convention covers all nations.[70]

The two major international agreements which provide copyright protection are the Universal Copyright Convention[71] and the Berne Convention.[72] These are supported by other bilateral and multilateral arrangements.[73] However, neither major agreement includes all leading nations. For example, the Soviet Union has signed neither, while the United States and most Latin American nations have not ratified the Berne Convention.[74]

The significance of these conventions has been generally noted as follows:

> The chief distinction between the two conventions is in the scope of the minimum protections that they provide. The Berne Convention imposes a high level of minimum protection and extends it over a broad range of the rights of the author, including not only the right to print and publish but to translate and to authorize adaptations to other forms and media of communications. The Universal Convention also extends substantive protection to the right to reproduce, but beyond that only the right to translate. In addition to the minima provided, both conventions rely on the principle of national treatment to prevent discrimination against the foreign author. Under this principle, on matters not specifically provided for in the applicable Convention, the foreign work is entitled in any State bound by that Convention to the protection that is afforded a work originating in that State. An unfortunate consequence of the existing arrangements is

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69. 28 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 9, U.N. Doc. A/AC.105/117 (1973).

70. CHAYES, *supra* note 17, at 118.

71. Universal Copyright Convention, *done at Geneva*, Sept. 6, 1952, 6 U.S.T. 2731, T.I.A.S. No. 3324, 216 U.N.T.S. 132.

72. Berne Convention for the Protection of Literary and Artistic Works, *signed* Sept. 9, 1886, 331 U.N.T.S. 217.

73. *See generally* DEP'T OF STATE, TREATIES IN FORCE 438 (1975).

74. CHAYES, *supra* note 17, at 118.

> that as between any two countries that are not members of the same Convention or parties to any bilateral or multilateral agreement, there is no copyright protection.
>
> The principal problems posed by this international legal regime are its complexity and its spotty coverage. These defects cannot be corrected until there is more general agreement on appropriate minimum levels of protection.[75]

The lack of universal agreement on copyright protection and the legal complexities that could arise as a result of satellite broadcasting explains the obvious willingness of the Working Group on Direct Broadcast Satellites as recently as 1974, to confine its discussions to broad generalities and principles:

> The view was expressed that a general reference to the question of protecting copyright would suffice without going into details or making specific recommendations. . . . However, the view was also expressed that among the principles to be formulated for governing direct television broadcast by satellite there should be one requiring States to cooperate with each other on a bilateral and multilateral basis within the framework of the Universal Convention on Copyrights and the Berne Convention in matters connected with the protection of copyright in television broadcasts by satellite that, in so doing, to give special consideration to the interests of those developing countries which have expressed an interest in the use of direct television broadcasting for the purposes of accelerating their national development.[76]

Effective implementation of international copyright protection remains to be achieved, even without the added issue of satellite broadcasting. To describe the contemporary scene is simply to admit its complexity, recognize the need for resolution, and conclude that the introduction of the direct broadcast satellite will only exacerbate present difficulties in developing a freer flow of information among nations.

This section, which began with a comparative examination of a fundamental human right and ended with a nod to the limitations of copyright, indicates the scope of the issues surrounding the international flow of information. These issues highlight the pressures to protect national sovereignty in an attempt to guard against the encroachment of technology on independent national

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75. *Id.*

76. 29 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 20, U.N. Doc. A/AC.105/127 (1974).

decision-making. The conceptual elements of national sovereignty in an era of increasing technological interdependence in communications is the subject of the next section. Differing national concepts about information management converge when the issue of national sovereignty arises having been specifically challenged by satellite broadcasting.

III. NATIONAL SOVEREIGNTY

This section begins with an excerpt from a recent letter to the author from the Saudi Arabian Director General of Broadcasting. The excerpt consists of statements made by the Minister of Information concerning the role of the media in his country:

> The bitter experience of the past has taught . . . citizens to view with a dubious eye the various forms of propaganda circulated among the people under the specious cloak of information.
>
> This so-called "information" is no more than an exaggeration of facts, and a distortion of truth, in most cases. In other words, gross exaggeration, skillful omissions and false statements, all [masquerade] as "information".
>
> This has prompted most citizens to seek . . . objective . . . information, the true facts imparted by official quarters and responsible information media.
>
> Here in the Kingdom of Saudi Arabia, we have adopted a serious outlook on progress, and we view with real optimism the steps taken under the wise leadership of Faysal, who strives to provide us with the instruments of force and of modern progress, whilst at the same time preserving our peculiar personality and our noble traditions.
>
> To this end we will stand firm in our courageous determination to reject anything that is represented by currents from without, or involving dangerous foreign trends aimed at sowing strife, confusion and disintegration in our midst.[77]

This rather strong pronouncement illustrates the close link between concepts of information management and national sovereignty. The discussion which follows has its roots in the nationalistic conviction of most countries which demands cautious progress in implementing the international flow of information. The apparent basis for such caution is that social change begins

77. Letter from Khalid H. Ghouth, Director General of Broadcasting, Saudi Arabia, to Jon T. Powell, Sept. 17, 1974 [copy on file at CALIF. W. INT'L L.J.].

with welcomed or uninvited ideas which inevitably accompany the technological communications evolution. Because the direct broadcast satellite is able to reach the individual across national boundaries without intervening control, a dramatic challenge exists to a nation's sovereign power over its own people.

A. Some Conceptual Parameters

The joint Canadian-Swedish paper submitted to the second session of the Working Group on Direct Broadcast Satellites describes some conceptual parameters used in formulation of a functional definition of national sovereignty as applied to the development of direct broadcast satellites. The paper notes that the state itself must ultimately be held responsible for any space activities, regardless of whether such activities originate with private agencies, international organizations or the state itself.[78] The launching nation is responsible "in all circumstances for whatever it launches," and even though no state may appropriate any part of outer space, it retains jurisdictional control over any objects launched from its territory.[79]

Having noted that the individual state bears the responsibility for space activity, the concept of national sovereignty arises not merely as an inherent right, but as a functional adjunct to legal responsibility. In the succeeding discussion, the Canadian-Swedish proposal suggests some guiding principles.

The first principle to be mentioned is that of mutual restraint, which dictates that states "shall conduct all their activities in outer space . . . with due regard to the corresponding interest of all other States."[80] Mutual restraint in the spirit of international cooperation rather than competition is the foundation for international law.[81]

Having argued for recognition of the principle that any international arrangement for direct broadcast satellites must first rest on the premise of international cooperation, the paper then

78. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 7, U.N. Doc. A/AC.105/59 (1969).

79. *See id.*; Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, *opened for signature*, Jan. 27, 1967, arts. 2, 3, 6, 8, 18 U.S.T. 2410, T.I.A.S. No. 6347, 610 U.N.T.S. 205 [hereinafter cited as Outer Space Treaty].

80. Outer Space Treaty, *supra* note 79, art. 9.

81. 24 U.N. GAOR, Comm. on Peaceful Uses of Outer Space, at 8, U.N. Doc. A/AC.105/59 (1969).

suggests three additional principles which, while attempting to define the limits of such activity, actually qualify the possibility of free flow of information almost out of existence.[82]

The second principle expands the concept of sovereign equality among member states, as stated in the U.N. Charter and the Outer Space Treaty.[83] Such equality recognizes that no state can claim any discriminatory right in space exploration, and that use of outer space is for all nations without qualification as a matter of common interest.[84] Furthermore, the aforementioned treaties assume the condition of mutuality of action; "[i]mplicit in these arrangements is the reciprocal responsibility of states . . . to each other."[85]

The concept of national sovereignty thus far examined rests upon a foundation whose concern for assigning ultimate responsibility argues for international cooperation based on conformity to pre-existing treaties. These treaties affirm that concomitant with responsibility for action is a right of action, subject to mutuality of goals and equality among states. Thus, national sovereignty arises from national responsibility and exists amid arrangements for mutual efforts while emphasizing a state's equality.[86]

In light of the foregoing discussion, it seems that satellite broadcasting is perceived primarily as a challenge to national sovereignty rather than an opportunity for expanded communication.

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82. *Id.* at 9.

83. U.N. CHARTER art. 2; Outer Space Treaty, *supra* note 79, art. 1.

84. Outer Space Treaty, *supra* note 79, preamble, art. 1.

85. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 8, U.N. Doc. A/AC.105/59 (1969).

86. In describing participation of member states in the International Telecommunications Union, the joint Canadian-Swedish paper draws a line between unlimited and controlled use of national authority.

> The ITU is thus a union of countries and groups of territories retaining their full internal and external sovereignty but which give undertakings to one another in the exercise of that sovereignty. The Union has been described as a kind of international association or parliament which adopts final acts, subject to approval by its members, that are to govern internationally the various types of telecommunication. . . .
>
> [T]he international instruments on telecommunications provide that the contracting states are bound to abide by and secure the observance of the terms of these instruments by the persons or firms engaged in telecommunication activities under their jurisdiction, whether they belong to the public or the private sector. These instruments therefore form part of international public law since they determine the negative and positive obligations placed on states in the exercise of their powers. They thus aim at substituting for unlimited powers a system by controlled competency.

Id. at 13.

Expressions of equality, reciprocal responsibility, unlimited powers, conformity, *et al*, underscore political interpretation. Inasmuch as it is necessary to develop a legal mechanism to restrain this potential threat to national sovereignty, the concept of prior consent becomes the inevitable guardian, the safeguard. As the Australian delegation to the Working Group cautiously noted: "[w]hen . . . direct 'in home' reception becomes feasible, orderly regulation by a Government of the reception of direct broadcasts may not be a practical possibility."[87]

B. The Issue of Propaganda

Article 12 of the Universal Declaration of Human Rights states the principle that:

> No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.[88]

The wording of this principle has also been included in article 17 of the International Covenant on Civil and Political Rights. Article 20 of this document also states that "any propaganda for war shall be prohibited by law," and further, that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited . . . by law."[89]

The fundamental problem in developing any workable agreement for controlling direct broadcast satellites is in identifying precisely the character of propaganda. In pragmatic terms, any definition must necessarily take into account two concepts, the official attitude towards the management of information, and the interpretation of what constitutes "arbitrary interference." Both concepts are the logical expressions of independent decision-making, a function of national sovereignty.

The tradition of electronic propaganda, which has had a history of continuous activity since World War II, has a two-sided nature as either an act of belligerence or simple national expression, depending on the political philosophy of the recipient nation.

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87. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 2, U.N. Doc. A/AC.105/63 (1969).

88. BROWNLIE, *supra* note 23, at 135.

89. *Id.* at 157-58.

The belligerent interpretation stems from policies which assume the political right to manage information and which result in objections to the radio voice reaching across national boundaries to the individual listener. This situation clearly challenges a government's right to control information—a challenge to national sovereignty.

The first draft convention for control of direct broadcast satellites proposed by the Soviet Union on June 23, 1972, illustrates that severe restrictions could relegate satellite broadcasting to a state of complete neutrality. Under this proposal, literally nothing could be broadcast which could be considered to be in any way controversial or objectionable by the recipient nation. The Soviet proposal begins by affirming the premise that satellite broadcasting should be used to improve international relations:

> [This proposal is inspired] by the prospects for direct television broadcasting by means of artificial earth satellites for the purpose of strengthening peace, friendship, co-operation and mutual understanding among peoples and in the interests of further social and cultural progress to mankind.[90]

Although there may be little disagreement with such a statement, the proposal rules out nearly all possible broadcasts which even potentially threaten the internal life of a nation. Article IV excludes publicizing ideas of war, militarism, naziism, national and racial hatred and enmity between peoples, as well as material which is immoral, instigating in nature, or is otherwise aimed at interfering in the domestic affairs of foreign policy of other States. Article V reads, "States, Parties to this convention may carry out direct television broadcasting by means of artificial earth satellites to foreign States only with the express consent of the latter."[91]

Article VI reaffirms the principle of prior consent and then describes illegal broadcasts so as to include almost every type of broadcast.[92] The proposal to classify almost everything as objec-

90. 27 U.N. GAOR, at 4, U.N. Doc. A/8771 (1972).

91. *Id.* at 5.

92. Article VI reads:

1. Transmission of television programmes by means of artificial earth satellites to foreign States without the express consent of the latter shall be regarded as illegal and as incurring the international liability of States.

2. Transmissions made in violation of Article IV of this Convention shall also be regarded as illegal and as incurring the international liability of States. In particular, the following types of broadcasts shall be regarded as illegal and as incurring the international liability of States:

tionable led one writer to state: "[e]xcluded, therefore, are May Day military parades, young ladies in bikinis, the flying of national flags and statements of political problems!"[93] The draft even requires prior consent for "unintentional radiation."[94]

The extent to which an aggrieved nation can take steps to assure relief includes destruction of the offending satellite if article IX(1) can be taken at face value:

> Any State Party to this Convention may employ the means at its disposal to counteract illegal television broadcasting which it is the object, not only in its own territory but also in outer space and other areas beyond the limits of the national jurisdiction of any State.[95]

There is little doubt of the serious intention displayed in the Soviet proposal. The direct broadcast satellite is seen primarily as an instrument of potential international aggression, its control necessitated by the volatile nature of its challenge to a nation which perceives total management of information as a sovereign right.[96]

(a) Broadcasts detrimental to the maintenance of international peace and security;

(b) Broadcasts representing interference in intra-State conflicts of any kind;

(c) Broadcasts involving an encroachment on fundamental human rights, on the dignity of worth of the human person and on fundamental freedoms for all without distinction to race, sex, language or religion;

(d) Broadcasts propagandizing violence, horrors, pornography and the use of narcotics;

(e) Broadcasts undermining the foundation of the local civilization, culture, way of life, traditions or language;

(f) Broadcasts which misinform the public on these or other matters.

Id.

93. Bezençon, *Television Via Direct Broadcast Satellites: Light or Damper?*, 24 E.B.U. REV. 16 (1973) [hereinafter cited as Bezençon].

94. 27 U.N. GAOR, at 6, U.N. Doc. A/8771 (1972).

95. *Id.* at 4.

96. Kolossov states that:

> All three provisions of the Soviet draft can become meaningful only in the form of legal norms. If the rule of express consent exists only in the form of a recommendation it is meaningless and undermines the general principle of state sovereignty. Here we must stress the fact that international law does not know any principle of "free flow of information beyond national frontiers." Attempts to formulate it in the form of a rule still exist as a draft only, and there is no evidence of eagerness on the part of the majority of states to make this draft a legal norm.
>
> The illegality of broadcasting detrimental to the maintenance of international peace and security, involving an encroachment on fundamental human rights undermining the foundations of the local civilization, culture, way of life, traditions or language, rests upon generally recognized international principles, including the UN Charter. The need

This proposal, while accepted for discussion purposes only, points distinctly to the possibility of future international conflicts. If a nation could legally destroy an offending satellite in space, could not the same right be extended to destroying a land-based transmitter, whose purpose is to broadcast to a people over their government's objections? The Soviet proposal creates another problem. While current international radio activities continue as an accepted though controversial activity, satellite broadcasting intended merely for regional or domestic use could create a crisis should there be unintentional or unavoidable spill-over across national frontiers.

The depth of Soviet concern to prevent even unintentional broadcasting is not to be taken lightly. One need only read Solzhenitsyn's *The Gulag Archipelago*[97] to become overwhelmed by the detailed description of a political system which thrives on arbitrary use of language, tight control of communication and studied manipulation of documentation for political purposes. Where a long-standing tradition exists of using the media chiefly for political purposes, international satellite broadcasting represents a particularly acute challenge to national sovereignty.[98]

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exists only to say expressly that they are mandatory in case direct television broadcasting is used as means of international mass information.

Finally, international law recognizes the legality of counter-action against illegal actions. It conforms to the inherent right of states to protect their national sovereignty, as well as their fundamental social, political and cultural values and economic interests. There is no doubt that measures of counter-action should be interpreted to mean the entire range of legal measures which states may take in accordance with the principles and norms of contemporary international law.

Kolossov, *Direct Satellite Broadcasting and International Law*, 5 UNITAR NEWS 23 (1973) [copy on file at CALIF. W. INT'L L.J.].

97. A. SOLZHENITSYN, THE GULAG ARCHIPELAGO (1974).

98. Concerning this challenge, Bezençon states:

A draft of [the Soviet] kind shifts the responsibility for programmes on to the governments. It is patterned on Soviet television. It bars the way to everything that is not conventional, screened by controllers and censors—civil servants all. Any involuntary spill-over of satellite transmitted programmes runs the risk of entailing diplomatic complications and retaliatory measures. But such instances are unavoidable, especially in the case of countries covering a small geographical area. For it must not be forgotten that national programmes, too, will be locked into this straightjacket. This shows to what regime of close political supervision they will be subjected if such draconian rules are accepted. As for the intervention of the UN Secretariat and UNESCO in the preparation of certain television programmes, this constitutes interference in the sovereignty of . . . states. . . . Will not the subjection to state control of programmes intended for foreign countries—or which spill over on to their territories—spread to domestic broadcasts as a whole? Shall we find a certain degree of independence, and a seeking after a less disguised or restricted truth, only in the self-contained net-

The Soviet proposal convention for the international control of broadcast satellites was the first of its kind to be presented to the United Nations, and is extreme in some of its precautions. However, other nations have also offered suggestions which are quite restrictive. For example, a French proposal has suggested bans on:

> [A]ny type of propaganda likely to impair the maintenance of international peace or the domestic peace of States;
> [A]ny interference in the internal affairs of foreign states;
> [A]ny broadcast detrimental to the dignity of the individual and on any type of propaganda likely to encourage the violation of human rights and fundamental freedoms;
> [O]bjectional broadcasts likely to disturb the balance of cultures, religions and philosophies;
> [T]he broadcasting of tendentious information and, consequently, an obligation to reveal the sources of all information broadcast.[99]

The Canadian-Swedish paper also recognized the difficulty of precisely identifying for legal purposes any set of standards which could be useful in terms of codifying international regulations. Propaganda represents whatever is objected to, and as a writer once postulated regarding myths of national and international unity, "it is seldom *what is* that is of political significance, but what people *think is*."[100]

> Obstacles to a binding and comprehensive set of standards have included the problem of interpreting the meaning of terms such as "propaganda", "misuse of information", etc., and the difficulty of assigning powers of interpretation to an international body. Nor have states thus far reached a consensus on more concrete obligations, much less on sanctions, enforcement provisions or machinery. Nor is this surprising in view of the considerable problems within individual states,

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works of cable television, operated by private companies or by local authorities?

If we really wanted to look on the black side, we should be inclined to admit that, in about 15 years' time, inside the "official" broadcasting organizations, fantasy will goose-step, news will have its edge taken off, dulled out of fear of threatened administrative or judiciary sanctions; culture will have its wings clipped and no one will dare to broadcast far and wide much more than football matches and folk-songs and dances.

Bezençon, *supra* note 93, at 16.

99. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 6, U.N. Doc. A/AC.105/62 (1969).

100. Connor, *Myths of Hemispheric, Continental, Regional and State Unity*, 84 POL. SCI. Q. 581 (1969).

> which questions concerning free speech, censorship and the control of media give rise to, not only in the context of domestic law and institutional arrangements but also in the light of social attitudes.[101]

The scope of information classifiable as propaganda can be extended even to include those expressions which reflect the socio-economic thrust of the developed nations. Such propaganda could overwhelm developing nations. Unrestricted information flowing from the industrial world could be seen as a monumental threat, with enormous potential for creating unrest, while it submerges the fragile structure of a developing national identity and culture.[102]

The United Kingdom, recognizing the impossibility of reaching agreement on all kinds of propaganda, has suggested a compromise which would provide for only the extreme cases of propaganda. This suggestion was qualified by a comment suggesting that enforcement is really the key to successful management.[103]

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101. 24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 21, U.N. Doc. A/AC.105/59 (1969).

102. As the French delegation to the Working Group noted:

> It is certain that the technological resources required to place a direct broadcasting satellite in orbit and utilize it would be beyond the means of all but a small number of States. . . . [T]his inequality will further increase the possibility of interference in the internal affairs of foreign states: television broadcasting can be a peculiarly effective medium for political propaganda or for advertising. Similarly, false reports can easily be propagated on an immense scale so as to confuse public opinion throughout the entire regions. Lastly, national cultures, civilizations and social systems will be presented with a further means of imposing themselves on others, through the suggestive power of television.

24 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 2, U.N. Doc. A/AC.105/117 (1973).

103. Even if legislation against the use of broadcasting media for political ends were considered generally desirable, it is probably impossible,

> [I]f only because agreement on what constitutes offensive political material could scarcely be reached. Nor would a general and binding agreement not to interfere in the internal affairs of another State be attainable even if it were in all cases beneficial. Yet the likely impact of television broadcasts on an international scale is such that some limitation on its use for more extreme forms of political agitation should be sought. This might take the form of a number of specific bans, which would embrace, *inter alia* recommendations in existing United Nations General Assembly resolutions on the use of political propaganda, e.g. encitement to race hatred, incitement to religious intolerance, incitement to violence within a State or against other states, abuse against a Head of State. General Assembly resolution 2450 (XXIII) on Human Rights and Scientific and Technological Developments may also be relevant here. However, while many States might abide by such rules, their usefulness in the final analysis depends upon whether they can be enforced.

The discussion thus far has highlighted the difficulties of managing satellite broadcasting as a matter of continuing effective international regulation. Concerns have also been expressed about the possible decreasing influence of governments should such a system come into being, despite useful plans which have been laid to protect national culture and state sovereignty. Conflict could arise from the pressures of a highly flexible technological service which cannot be matched by less flexible national institutions. Social change could thus become uncontrolled change.

> On the one hand, national legal provisions, whether in the form of laws, regulations, legal precedents or agreements, will soon prove inadequate to prevent abuses or protect rights. On the other hand, in certain countries the national information agencies may find that the conditions under which they operate and the extent or effectiveness of their action are gradually being threatened. Finally, the danger may be increased on material interests contained in the transmissions.
>
> It would certainly be a mistake to exaggerate the risk and to dream up extraordinary situations. The danger is bound to be reduced to an appreciable extent by a variety of obstacles—material, linguistic, and other; but the foreseeable advances of science and technology make it reasonable to assume that most of these obstacles can be overcome. We must be aware of the dangerous gulf which is forming between scientific progress and the stagnation of institutional arrangements. It is better, in fact, to be safe than sorry.[104]

The discussion of the challenge of satellite broadcasting to national sovereignty has now come full circle. The opening statement from Saudi Arabia, which conveyed a message of distrust for external sources of information, led to an affirmation of national sovereignty in international communication matters. This, in turn, introduced under the heading of propaganda the problems of identifying any material as non-controversial against the will of the recipient nation. Finally, the circle was closed with a note of the possibility that even careful regulation could result in an uncontrollable situation brought on by technological pressures. This possible loss of national control underscores the bitter concern expressed in the opening statement.

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28 U.N. GAOR, Comm. on the Peaceful Uses of Outer Space, at 7, U.N. Doc. A/AC.105/117 (1973).

104. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, COMMUNICATION IN THE SPACE AGE: THE USE OF SATELLITES BY THE MASS MEDIA 175 (1968).

National sovereignty, however described, generally remains a matter of maintenance or loss of independent political power. Ideas can bring change. A nation is anxious to manage its own ideas and initiate its own changes. Satellite broadcasting threatens this role because of television's pervasive influence.

IV. CONCLUSION

Broadcasting has been a part of the communications scene for less than fifty-five years. Communications satellites came into use during the early sixties, and the direct broadcast satellite had its first far-flung public application in 1975. This surging pace of technological capability to communicate more information over greater distances in shorter time has contributed to an acceleration in the dissemination of ideas and social change. However, this acceleration has not been matched by any dramatic improvement in human values. As Lester B. Pearson commented:

> Socially and politically [man] still lives in tribal savagery, while technologically and scientifically he has made more progress in [fifty] years than in the previous 5,000. He has ascended into outer space. He can communicate with a satellite millions of miles away but he can communicate only in accents of fear and hostility with a neighbor on the other side of a curtain.[105]

The advent of direct broadcast satellites has highlighted two extreme positions: absolute national sovereignty in the management of information, and unequivocal recognition of the fundamental human right to information. The concepts of national sovereignty and the free flow of information have converged through possible use of direct-to-home television from satellites. With no intervening agent, as is presently the case with the employment of earth stations, governments face the likelihood of someday having another nation determine in part what will be broadcast to their citizens. Depending upon a government's degree of commitment to a right of responsibility for information management, other nations may be challenged or intolerably threatened. In any case, the problem remains to reach international agreement which satisfactorily balances the flow of information and traditional concerns for national sovereignty. This balance must be achieved in a milieu of great change and acute

105. Pearson, *Freedom and Change*, 8 THE ATLANTIC COMMUNITY Q. 62 (1970).

awareness of dissimilarities, part of which can be attributed to increased communications.

In November, 1972, when the General Assembly voted to instruct the Committee on the Peaceful Uses of Outer Space to develop a set of principles to govern unwanted broadcasts by satellites, the United States cast the only negative vote.[106] At that time the vote was seen clearly as a protest against tampering with the first amendment philosophy of laissez-faire in information matters. An *a priori* consideration of prior consent was considered to be identical to prior restraint.

Since the United States was the only nation which took this position, it appears that some accommodation will have to be made. The spirit of detente encourages valid pragmatic answers to irreconcilable differences. As Arthur Hartman, Assistant Secretary of State for European Affairs, explained:

> The Administration sympathizes with the natural tendency of Americans to want others to share the rights and freedoms we value so highly. But if the United States attempts to make increased freedom within the Soviet Union a rigid precondition for improved relations, we will risk obtaining neither—neither improved relations nor an increased regard in the Soviet Union for human rights. We will of course, not abandon our ideals in pursuing improved relations with the Soviet Union. But we are convinced that our foreign policy must be aimed principally at influencing the foreign policies of other governments and not their domestic structures.[107]

There are several points to be kept in mind regarding the potential social impact of the direct broadcast satellites. First, the mere existence of such satellites indicates a technological presence and pressure for implementation that cannot simply be legislated out of existence. This new capacity to communicate may be hindered or cramped by restrictions, but its presence as an important technological instrument waits always for greater utilization. The milieu for encouraging that use may well come from those nations which are thrust into the twentieth century and faced with educational objectives that are unattainable by any other means.

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106. *See* 17 UNESCO 1015-16 (1972); note 34, *supra*.

107. A. Hartman, The Meaning of Detente 4 (1974) (Dept. of State publication).

The second point is that the solutions to conflicts in differing national policies of information management need not be perceived as an undesirable assimilation of countervailing concepts. Rather, a process of determined accommodation must be implemented in a spirit of mutual interest in common goals while national policies and culture are preserved.

Satellite technology has aroused a new awareness of the importance of human communication and the socio-political restrictions thrust upon it. It would seem that if nothing else, the direct broadcast satellite has highlighted the vulnerability of political ideologies which severely restrict a citizen's access to information. The satellite has helped to make the individual more important by emphasizing his role as a receiver of information, and it will continue to do so as messages multiply across national boundaries.

This article closes with two excerpts from a recent address by Secretary of State Henry Kissinger before the United Nations General Assembly. These excerpts underscore the contribution made by global communications to both the betterment and the interdependence of man.

> As members of this Organization, we are pledged not only to free the world from the scourge of war, but to free mankind from the fear of hunger, poverty, and disease. The quest for justice and dignity—which finds expression in the economic and social articles of the United Nations Charter—has global meaning in an age of instantaneous communication. Improving the quality of human life has become a universal political demand, a technical possibility, and a moral imperative. . . .
>
> For the first time in history mankind has the technical possibility to escape the scourges that used to be considered inevitable. Global communications ensures that the thrust of human aspirations becomes universal. Mankind insistently identifies justice with the betterment of the human condition. Thus, economics, technology, and the sweep of human values impose a recognition of our interdependence and of the necessity of our collaboration.[108]

The conceptual convergence of the free flow of information and national sovereignty is but another sign of growing inter-

108. Statement by Henry Kissinger before the Sixth Special Session of the United Nations, April 15, 1974, 70 DEP'T STATE BULL. 477 (1974).

dependence among nations. Technology has brought about a greater awareness of the international effects of domestic decision-making because what takes place in one part of the world may profoundly affect the rest. This spreading interdependence requires continual effort toward positive accommodation if peace is to have any constructive meaning.